

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26160
Docket Number MW-26157

Peter R. Meyers, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation (Amtrak)
(Northeast Corridor)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of B&B Carpenter D. R. McClanahan for alleged misuse of 'AMTRAK issued AMOCO credit card #4763-0016 at the T. G. Mallot AMOCO Station, 731 S. Philadelphia Road, Aberdeen, Maryland,' was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-683D).

2. The claimant's record shall be cleared of the charge leveled against him, he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed as a B&B Carpenter by the Carrier, with approximately six years of service at the time of the incident giving rise to the Claim. By letter dated May 26, 1983, Claimant was removed from service pending further action as a result of an investigation by Carrier's police into Claimant's alleged misuse of a Company Amoco Credit Card to purchase gasoline for his personal vehicle. On June 1, 1983, Claimant was notified to appear for a Trial in connection with the charge that he had misused the Company Credit Card. After a postponement, the Trial was held on June 30, 1983, and resulted in Claimant's dismissal from the Carrier's service. The Organization thereafter filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in the record; and we find that the Claimant was afforded all of his procedural rights in that he received timely notice of the charges against him, and he was afforded a fair and impartial Hearing with all of his due process rights provided.

With respect to the substantive charge, this Board finds that there is sufficient probative evidence in the record to establish that the Claimant was guilty of the charge against him. The Credit Card purchase was made with the card issued to the Claimant; the card was admittedly in the Claimant's possession on the date of the purchase; it was admittedly the Claimant's signature on the Credit Card receipt; the gas station attendant noted, on the receipt, the license number of the vehicle into which the gas was placed; and that number is the license number of the Claimant's personal vehicle. Hence, there is sufficient evidence that the Claimant misused the Credit Card to purchase gasoline for his own personal vehicle. That action was clearly a violation of Rules and subjected the Claimant to discipline.

Once this Board determines that a Claimant was guilty of the offense with which he was charged, we next turn our attention to the type of discipline imposed. It is fundamental that this Board will not set aside discipline imposed by a Carrier unless it is unreasonable, arbitrary, or capricious. In this case, the Claimant was charged with a serious offense amounting to theft or dishonesty. Theft or dishonesty is often considered to be a dismissible action, even on the first offense. As this Board stated in Third Division Award 17155:

"We have held dishonesty in any form is a matter of serious concern and that dismissal from the service because of it is not an excessive application of discipline nor an abuse of discretion."

This Board sees no reason to set aside the discipline.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

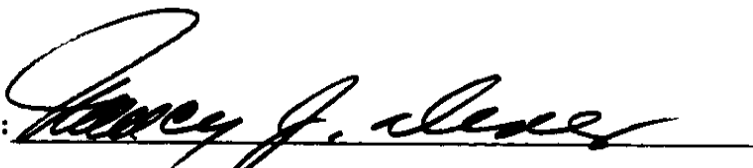
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1986.